

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD G. TIEDEMANN, JR.,
LINDSAY A. WEAVER, JR., and ROBERTO PADOVANI

Appeal No. 2000-1546
Application 08/588,149

ON BRIEF

Before JERRY SMITH, LALL and LEVY, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 16-41, which constitute all the claims remaining in the application.

The disclosed invention pertains to a method and

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Representative claim 16 is reproduced as follows:

16. A method for reducing interference in a communication channel used by at least one of a plurality of first transceivers to initiate communication with a second transceiver, said method comprising the steps of:

transmitting from said at least one first transceiver an access probe at a first level of power, said first level of power being determined on the basis of signal power received from said second transceiver;

determining whether said access probe has been received at said second transceiver; and

retransmitting said access probe from said at least one first transceiver at a level of power greater than said first level of power until said access probe is received at said second transceiver.

The examiner relies on the following references:

Gilhousen et al. (Gilhousen)	5,416,797	May 16, 1995 (filed on Jun. 25, 1990)
Seki et al. (Seki)	JP 02-256331	Oct. 17, 1990
Imamura et al. (Imamura)	JP 03-231523	Oct. 15, 1991

Claims 16-18, 22, 24, 32, 36-38 and 40 stand rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of Imamura. Claims 19-21, 23, 25-31 and 39 stand rejected under 35 U.S.C. § 103 as being unpatentable over the teachings of Imamura and Gilhousen. Claims 33-35 and 41 stand rejected under

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examiner's answer [page 4].

Rather than repeat the arguments of appellants or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon supports the rejections as set forth by the examiner. Accordingly, we affirm.

Appellants indicated in the main appeal brief that the claims on appeal would stand or fall together as a single group

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argued. Since the examiner is not permitted to respond to arguments made in a reply brief, we do not have the position of the examiner with regard to the separate patentability of claims 16 and 36 as argued by appellants. Therefore, we will not accept a grouping of claims first proposed in a reply brief because the examiner has not had an opportunity to properly respond to such arguments. Permitting a new group of claims to be argued in a reply brief would simply encourage an appellant to withhold arguments until after the examiner's answer has been received. We do not intend to encourage such a practice. Therefore, for the purpose of making the decision in this appeal, all claims will stand or fall together in a single group as indicated in the main brief. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Accordingly, we will consider the rejection against independent claim 16 as representative of all the claims on appeal.

Representative independent claim 16 stands rejected under

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as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir.); cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore and Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

The examiner indicates how he finds anticipation of claim 16 in the disclosure of Imamura [answer, pages 4-5]. Appellants argue that in Imamura, the mobile station makes no estimation at all, based on received power or anything else, as to what the power level of its first transmission should be [brief, 5th page]. The examiner responds that appellants' argument is not commensurate in scope with the claimed invention. The examiner finds that the recitation "signal power received from said second transceiver" in claim 16 reads on the minimum transmission power information that the mobile station in Imamura receives from the base station. Appellants respond that Imamura teaches determining the power with which the access probe is to be

unit before the mobile unit sends an access probe to the base unit [translation, page 8]. The only question is whether this minimum transmission information constitutes "signal power received from said second [base] transceiver." Although appellants argue that the examiner's interpretation of the claimed phrase is inconsistent with the specification, we do not agree. The specification does not provide that "signal power received from said second transceiver" must be interpreted in only one way. We agree with the examiner that, broadly speaking, the transmission of information related to what signal power to use in Imamura means that the determination is based on signal power received from the base unit. In other words, we find that the phrase in question is met by a disclosure in which the signal power of the base unit is detected or by a disclosure in which the signal power of the mobile unit is assigned based on information from the base unit. The claims on appeal could easily be amended to prevent this second interpretation from applying.

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the claims stand or fall together as a single group, we also sustain this rejection with respect to claims 17, 18, 22, 24, 32, 36-38 and 40. Although claims 19-21, 23, 25-31, 33-35, 39 and 41 are rejected under 35 U.S.C. § 103 using Imamura with an additional reference, appellants have made no arguments with respect to the rejections under 35 U.S.C. § 103. Since we find that the examiner has established a prima facie case of obviousness, and since appellants have presented no arguments in opposition to this rejection, we also sustain the rejection of claims 19-21, 23, 25-31, 33-35, 39 and 41.

In summary, we have sustained each of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 16-41 is affirmed.

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No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

JERRY SMITH
Administrative Patent Judge

PARSHOTAM S. LALL
Administrative Patent Judge

STUART S. LEVY
Administrative Patent Judge

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